(13)

No. 125

In the Supreme Court of the United States

OCTOBER TERM, 1944

CENTURY OXFORD MANUFACTURING CORPORATION,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court below (R. 1024–1026) is reported in 140 F. (2d) 541. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 975–1006) are reported in 47 N. L. R. B. 835.

JURISDICTION

The decree of the court below (R. 1027–1029) was entered on March 3, 1944. The petition for a writ of certiorari was filed on June 3, 1944. The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

In a secret election conducted by the Board, a union was designated by a majority of petitioner's employees as their representative for collective bargaining. Six weeks later, a petition purporting to repudiate the union as their bargaining representative was circulated among the employees and was signed by a majority of them. The question is whether, under the circumstances of this case, the Board was entitled to hold that petitioner was required to continue to bargain collectively with the union.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 9–10.

STATEMENT

Upon the usual proceedings, the Board, on February 22, 1943, issued its findings of fact, conclusions of law, and order (R. 975–1006). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:[1]

[1] In the following statement, references preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

On October 31, 1941, the Wholesale and Warehouse Workers Union, Local 65, C. I. O., hereinafter called the Union, initiated a proceeding under Section 9 (c) of the Act to determine its authority to represent petitioner's employees for purposes of collective bargaining (R. 892–893).[2] Thereafter petitioner and the Union entered into a stipulation, in which it was agreed that representation of petitioner's employees should be determined by a secret election to be conducted by the Board's Regional Director (R. 990; 894–896), and that petitioner would bargain collectively with the Union if the latter should receive a majority of the votes cast (R. 896). On November 19, 1941, an election was held, and the Union was designated by a vote of sixty to nineteen as the collective bargaining representative of petitioner's employees (R. 990–991; 897–899). The results of the election were certified to the parties by the Board's Regional Director on November 22 (R. 897–899), and negotiations for a collective agreement were accordingly begun (R. 1000; 368–384, 422).

On December 31, while negotiations were still under way, several employees circulated a petition purporting to repudiate the Union as the

[2] The Board found that petitioner had theretofore, in June 1941, violated Section 8 (1) of the Act by interfering with the self-organization of its employees (R. 980–983). This finding is not challenged by the petition.

employees' collective bargaining agent (R. 983; 588, 605, 902). A majority of the employees signed, and the petition was submitted to petitioner's general manager (R. 983; 719–720). Petitioner thereafter refused to continue collective bargaining with the Union on the ground that the Union no longer represented a majority of its employees (R. 991; 882).[3]

Upon the foregoing facts the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act, and entered an order requiring petitioner to cease and desist from its violations of the Act, to bargain collectively with the Union upon request, and to post appropriate notices (R. 1004–1007).[4] On February 15, 1944, upon petition of the Board, the Circuit Court of Appeals for the Second Circuit held, *per curiam*, that the Board's order should be enforced (R. 1024–1026). On March 3, 1944, it entered a decree accordingly (R. 1027–1029).

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[3] Thereafter, on March 3, 1942, petitioner signed a contract with the "Committee", a rival labor organization of its employees, which, the Board found, had been dominated and assisted by petitioner since December 31, in violation of Section 8 (2) of the Act (R. 983-988). The petition raises no issue concerning this finding.

[4] The order contains additional provisions relating to the findings of violations of Section 8 (1) and (2) mentioned in the foregoing footnotes. These provisions are not challenged by the petition.

ARGUMENT

The court below correctly rejected petitioner's contention that its statutory obligation to bargain with the Union terminated abruptly on December 31, 1941, when the petition purporting to repudiate the Union as the representative of a majority of its employees was submitted to petitioner. As this Court recently said in *Franks Bros. Co.* v. *National Labor Relations Board*, No. 521, October Term 1943, decided April 10, 1944, slip opinion, pages 3–4, "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed. * * * After such a reasonable period the Board may, in a proper proceeding and upon a proper showing, take steps in recognition of changed situations which might make appropriate changed bargaining relationships."

The Board has sought to achieve a proper balance between the policy of affording employees full freedom of choice and that of securing stability of representation adequate to attain the statutory goal of industrial peace under collective agreements. With the unanimous approval of the courts (see *National Labor Relations Board* v. *Appalachian Electric Power Company*, 140 F. (2d) 217, 220–222 (C. C. A. 4); *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F.

(2d) 876, 881–882 (C. C. A. 3), certiorari denied, 319 U. S. 751; *Valley Mould & Iron Corporation* v. *National Labor Relations Board,* 116 F. (2d) 760, 764–765 (C. C. A. 7), certiorari denied, 313 U. S. 590; cf. *Franks Bros. Co.* v. *National Labor Relations Board, supra*), it has evolved the rule that an employer must recognize for a reasonable period thereafter a bargaining representative duly designated in a Board election, unless in the meantime, because of the circumstances of the particular case, a contrary designation is made by the Board.[5] "Without such a rule," the Board stated in the present case (R. 993), "collective bargaining would be deprived of stability, and administrative determinations would become ephemeral." Compare *National Labor Relations Board* v. *Whittier Mills Company,* 111 F. (2d) 474, 478 (C. C. A. 5). The court below upheld the Board's authority in these words (R. 1026):

> Unless the Board has power to hold the employees to their choice for a season, it must keep ordering new elections at the whim of any volatile caprice; for an election, conducted under proper safeguards, provides the most reliable means of ascer-

[5] In harmonizing the policies of free choice and stability, the Board has adopted the rule that it will in the normal instance refuse to entertain a petition for a new designation of employee representative within a year after the issuance of a certification. *Matters of Wilson & Co.*, 25 N. L. R. B. 938; *Minneapolis-Moline Power Implement Co.*, 14 N. L. R. B. 920; *Westinghouse Electric & Mfg. Co.*, 38 N. L. R. B. 404, 409.

> taining the deliberate will of the employees. How long the employees' undoubted power to recall an elected representative may be suspended, is a matter primarily, perhaps finally, for the Board; but a period of six weeks is on any theory not the limit.

The Board relied upon an additional ground in holding that the petition presented to the employer on December 31, 1941, did not constitute an effective repudiation by a majority of its employees of the prior designation of the Union as their exclusive bargaining representative. The Union, the Board found, had been elected only six weeks earlier by a large majority of petitioner's employees. "The ballots were cast secretly in an election surrounded by all the safeguards customarily provided to insure complete freedom of choice. Such elections, held under the auspices of the Board, in accordance with express statutory provisions, have been uniformly found to furnish the best evidence of employees' desires concerning representation for collective bargaining. When employees have expressed their considered opinions by a method which leaves no room for doubt as to their true desires, repudiation of their selection can be established only through the medium of an equally probative technique. Clearly this petition, subject to all the infirmatives of a public poll, falls short of this standard" (R. 992).

No additional question is raised by petitioner's challenge of the exclusion of evidence bearing

upon the motives of the employees who sought to repudiate the Union (Pet. 12). If the court below correctly decided that the Board may hold the employees to their choice for a reasonable period, the proffered evidence was clearly immaterial.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1944.